

103^D CONGRESS
2^D SESSION

H. R. 4460

To provide for conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1994

Mr. MINETA (for himself and Mr. APPLEGATE) (both by request) introduced the following bill; which was referred to the Committee on Public Works and Transportation

A BILL

To provide for conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Water Resources Development Act of 1994”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

- Sec. 2. Definitions.
- Sec. 3. Project authorizations.
- Sec. 4. Project modifications.
- Sec. 5. Cost-sharing of environmental projects.
- Sec. 6. Recovery of costs for clean up of hazardous or toxic substances.
- Sec. 7. Collaborative research and development.
- Sec. 8. National inventory of dams.
- Sec. 9. Hydroelectric power project uprating.
- Sec. 10. Engineering and environmental innovations of national significance.
- Sec. 11. Federal lump-sum payments for Federal operation and maintenance costs.
- Sec. 12. Cost-sharing for removal of existing project features.
- Sec. 13. Technical advisory committee.
- Sec. 14. Technical corrections.
- Sec. 15. Project deauthorizations.
- Sec. 16. Contract goals for small disadvantaged business concerns and historically black colleges and universities or minority institutions.
- Sec. 17. Cost-sharing for dam safety work.
- Sec. 18. Revocation of section 211, River and Harbor Act of 1950.
- Sec. 19. Research and development in support of Army Civil Works program.
- Sec. 20. Interagency and international support authority.
- Sec. 21. Expansion of section 1135 program.
- Sec. 22. Regulatory Program Fund.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the term “Secretary”
 3 means the Secretary of the Army.

4 **SEC. 3. PROJECT AUTHORIZATIONS.**

5 [RESERVED]

6 **SEC. 4. PROJECT MODIFICATIONS.**

7 [RESERVED]

8 **SEC. 5. COST-SHARING OF ENVIRONMENTAL PROJECTS.**

9 Section 103(c) of the Water Resources Development
 10 Act of 1986 (100 Stat. 4085) is amended by adding the
 11 following new subsection:

12 “(7) environmental protection and restoration:
 13 25 percent.”.

1 **SEC. 6. RECOVERY OF COSTS FOR CLEAN UP OF HAZARD-**
2 **OUS OR TOXIC SUBSTANCES.**

3 Amounts recovered under section 107 of the Com-
4 prehensive Environmental Response, Compensation, and
5 Liability Act of 1980 (42 U.S.C. 9607) for any response
6 action taken by the Secretary in support of the Army Civil
7 Works program shall be credited to the appropriate Trust
8 Fund Account from which the cost of such response action
9 has been paid or will be charged.

10 **SEC. 7. COLLABORATIVE RESEARCH AND DEVELOPMENT.**

11 Section 7 of the Water Resources Development Act
12 of 1988 (102 Stat. 4022) is amended by—

13 (1) redesignating subsections (b), (c), and (d)
14 as paragraphs (1), (2), and (3);

15 (2) deleting subsection (e); and

16 (3) adding the following new subsection:

17 “(b) PRE-AGREEMENT TEMPORARY PROTECTION OF
18 TECHNOLOGY.—If the Secretary determines that informa-
19 tion developed as a result of research and development ac-
20 tivities conducted by the Corps of Engineers is likely to
21 be subject to a cooperative research and development
22 agreement within 2 years of its development and that such
23 information would be a trade secret or commercial or fi-
24 nancial information that would be privileged or confiden-
25 tial if the information had been obtained from a non-Fed-
26 eral party participating in a cooperative research and de-

1 velopment agreement under section 12 of the Stevenson-
2 Wydler Technology Innovation Act of 1980, the Secretary
3 may provide appropriate protection against the dissemina-
4 tion of such information, including exemption from sub-
5 chapter II of chapter 5 of title 5, United States Code, until
6 the earlier of the date the Secretary enters into such an
7 agreement with respect to such technology or the last day
8 of the 2-year period beginning on the date of such deter-
9 mination. Any technology covered by this section which be-
10 comes the subject of a cooperative research and develop-
11 ment agreement shall be accorded the protection provided
12 under section 3710a(c)(7)(B) of title 15, United States
13 Code, as if such technology had been developed under a
14 cooperative research and development agreement.”.

15 **SEC. 8. NATIONAL INVENTORY OF DAMS.**

16 Section 13 of Public Law 92–367 (33 U.S.C. 467l),
17 is amended by striking the second sentence in its entirety
18 and replacing it with the following: “There is authorized
19 to be appropriated up to \$500,000 each fiscal year for the
20 purpose of carrying out this section.”.

21 **SEC. 9. HYDROELECTRIC POWER PROJECT UPRATING.**

22 (a) In accomplishing the maintenance, rehabilitation,
23 and modernization of hydroelectric power generating fa-
24 cilities at water resources projects under the jurisdiction
25 of the Department of the Army, the Secretary is author-

1 ized to increase the efficiency of energy production and
2 the capacity of these facilities if, after consulting with
3 other appropriate Federal and State agencies, the Sec-
4 retary determines that such uprating—

5 (1) is economically justified and financially fea-
6 sible;

7 (2) will not result in significant adverse affects
8 on the other purposes for which the project is au-
9 thorized;

10 (3) will not result in significant adverse envi-
11 ronmental impacts; and

12 (4) will not involve major structural or oper-
13 ation changes in the project.

14 (b) This section does not affect the authority of the
15 Secretary and the Administrator of the Bonneville Power
16 Administration under section 2406 of the Energy Policy
17 Act of 1992 (16 U.S.C. 839d–1).

18 **SEC. 10. ENGINEERING AND ENVIRONMENTAL INNOVA-**
19 **TIONS OF NATIONAL SIGNIFICANCE.**

20 To encourage innovative and environmentally sound
21 engineering solutions and innovative environmental solu-
22 tions to problems of national significance, the Secretary
23 may undertake surveys, plans, and studies and prepare re-
24 ports which may lead to work under existing civil works
25 authorities or to recommendations for authorizations.

1 There is authorized to be appropriated up to \$3,000,000
2 each fiscal year for the purpose of carrying out this sec-
3 tion. The Secretary may also accept and expend additional
4 funds from other Federal agencies, States, or non-Federal
5 entities for purposes of carrying out this section.

6 **SEC. 11. FEDERAL LUMP-SUM PAYMENTS FOR FEDERAL OP-**
7 **ERATION AND MAINTENANCE COSTS.**

8 (a) At a water resources project where the non-Fed-
9 eral interest is responsible for performing the operation,
10 maintenance, replacement, and rehabilitation of the
11 project and the Federal Government is responsible for
12 paying a portion of the operation, maintenance, replace-
13 ment, and rehabilitation costs, the Secretary may provide,
14 under terms and conditions acceptable to the Secretary,
15 a payment of the estimated total Federal share of such
16 costs to the non-Federal interest after completion of con-
17 struction of the project or a separable element thereof.

18 (b) The amount to be paid shall be equal to the
19 present value of the Federal payments over the life of the
20 project, as estimated by the Government, and shall be
21 computed using an interest rate determined by the Sec-
22 retary of the Treasury taking into consideration current
23 market yields on outstanding marketable obligations of the
24 United States with maturities comparable to the remain-
25 ing life of the project.

1 (c) The Secretary may make a payment under this
2 section only if the non-Federal interest has entered into
3 a binding agreement with the Secretary to perform the
4 operation, maintenance, replacement, and rehabilitation of
5 the project or separable element. The agreement must be
6 in accordance with the requirements of section 221 of the
7 Flood Control Act of 1970 (84 Stat. 1818), and must con-
8 tain provisions specifying the terms and conditions under
9 which a payment may be made under this section and the
10 rights of, and remedies available to, the Federal Govern-
11 ment to recover all or a portion of a payment made under
12 this section in the event the non-Federal interest suspends
13 or terminates its performance of operation, maintenance,
14 replacement, and rehabilitation of the project or separable
15 element, or fails to perform such activities in a manner
16 satisfactory to the Secretary.

17 (d) Except as provided in subsection (c), a payment
18 provided to the non-Federal interest under this section
19 shall relieve the Government of any future obligations for
20 paying any of the operation, maintenance, replacement,
21 and rehabilitation costs for the project or separable ele-
22 ment.

1 **SEC. 12. COST-SHARING FOR REMOVAL OF EXISTING**
2 **PROJECT FEATURES.**

3 After the date of enactment of this Act, any proposal
4 submitted to the Congress by the Secretary for modifica-
5 tion of an existing authorized water resources development
6 project by removal of one or more of the project features
7 which would significantly and adversely impact the author-
8 ized project purposes or outputs shall include the rec-
9 ommendation that the non-Federal sponsor shall bear 50
10 percent of the cost of any such modification, including the
11 costs of acquiring any additional interests in lands which
12 become necessary for accomplishing the modification.

13 **SEC. 13. TECHNICAL ADVISORY COMMITTEE.**

14 The Technical Advisory Committee established pur-
15 suant to section 310(a) of Public Law 101-640 shall no
16 longer exist after the date of enactment of this Act.

17 **SEC. 14. TECHNICAL CORRECTIONS.**

18 (a) Section 203(b) of the Water Resources Develop-
19 ment Act of 1992 (106 Stat. 4826) is amended by striking
20 out “(8662)” and inserting in lieu thereof “(8862)”.

21 (b) Section 225(c) of the Water Resources Develop-
22 ment Act of 1992 (106 Stat. 4838) is amended by striking
23 out “(8662)” in the second sentence and inserting in lieu
24 thereof “(8862)”.

1 **SEC. 15. PROJECT DEAUTHORIZATIONS.**

2 (a) Section 1001 of the Water Resources Develop-
3 ment Act of 1986 as amended (33 U.S.C. 579a) is further
4 amended by—

5 (1) striking “10” where it appears in the first
6 sentence of paragraph (2) of subsection (b) and re-
7 placing it with “5”;

8 (2) striking the word “Before” at the beginning
9 of the second sentence of paragraph (2) of sub-
10 section (b) and replacing it with the words “Upon
11 official”; and

12 (3) inserting the words “planning, designing,
13 or” immediately before the word “construction” in
14 the last sentence of paragraph (2) of subsection (b).

15 (b) Section 52(a) of the Water Resources Develop-
16 ment Act of 1988 (102 Stat. 4044) is repealed.

17 **SEC. 16. CONTRACT GOALS FOR SMALL DISADVANTAGED**
18 **BUSINESS CONCERNS AND HISTORICALLY**
19 **BLACK COLLEGES AND UNIVERSITIES OR MI-**
20 **NORITY INSTITUTIONS.**

21 (a) GOAL.—Except as provided in subsection (c), the
22 Secretary shall establish a goal of 5 percent of the total
23 amount of civil works funds obligated for contracts and
24 subcontracts entered into by the Department of the Army
25 for fiscal years 1994 through 2000 for award to small
26 business concerns owned and controlled by socially and

1 economically disadvantaged individuals (as such term is
2 used in section 8(d) of the Small Business Act (15 U.S.C.
3 637(d)) and regulations under that section), the majority
4 of the earnings of which directly accrue to such individ-
5 uals, and to historically black colleges and universities or
6 minority institutions (as defined in paragraphs (3), (4),
7 and (5) of section 312(b) of the Higher Education Act
8 of 1965 (20 U.S.C. 1058)).

9 (b) COMPETITIVE PROCEDURE.—To the extent prac-
10 ticable and when necessary to facilitate achievement of the
11 5 percent goal in subsection (a)—

12 (1) the Secretary is authorized to enter into
13 contracts using less than full and open competitive
14 procedures, but shall pay a price not exceeding the
15 fair market cost by more than 10 percent in pay-
16 ment per contract to contractors or subcontractors
17 of contracts described in subsection (a); and

18 (2) the Secretary shall maximize the number of
19 small disadvantaged business concerns, historically
20 black colleges and universities, and minority institu-
21 tions participating in the program.

22 (c) EXCEPTION.—For purposes of subsection (b), the
23 same exception that is recognized in section 712(a) of
24 Public Law 100–656 for set asides pursuant to section
25 1207 of Public Law 99–661 shall apply.

1 (d) NONAPPLICABILITY.—Subsection (a) does not
2 apply if—

3 (1) the Secretary determines that the existence
4 of a national emergency requires otherwise; and

5 (2) the Secretary notifies the Congress of such
6 determination and the reasons therefor.

7 **SEC. 17. COST-SHARING FOR DAM SAFETY WORK.**

8 Section 1203(a)(1) of the Water Resources Develop-
9 ment Act of 1986 is amended by inserting the following
10 language immediately after the first sentence: “Where cost
11 sharing was not based on a cost allocation, 15 percent of
12 the modification costs shall be assigned among project
13 purposes in the same manner as costs were originally as-
14 signed, as determined by the Secretary.”.

15 **SEC. 18. REVOCATION OF SECTION 211, RIVER AND HARBOR**
16 **ACT OF 1950.**

17 Section 211 of the River and Harbor Act of 1950,
18 Public Law 81–516, is hereby repealed.

19 **SEC. 19. RESEARCH AND DEVELOPMENT IN SUPPORT OF**
20 **ARMY CIVIL WORKS PROGRAM.**

21 (a) In carrying out research and development in sup-
22 port of the Civil Works program of the Department of the
23 Army, the Secretary may utilize contracts, cooperative re-
24 search and development agreements, cooperative agree-
25 ments, and grants with non-Federal entities, including

1 State and local governments, colleges and universities,
2 consortia, professional and technical societies, public and
3 private scientific and technical foundations, research insti-
4 tutions, educational organizations, and non-profit organi-
5 zations.

6 (b) With respect to contracts for research and devel-
7 opment, the Secretary may include requirements that have
8 potential commercial application and may also use such
9 potential application as an evaluation factor where appro-
10 priate.

11 **SEC. 20. INTERAGENCY AND INTERNATIONAL SUPPORT**
12 **AUTHORITY.**

13 The Secretary may engage in activities in support of
14 other Federal agencies or international organizations on
15 problems of national significance to the United States.
16 The Secretary may engage in activities in support of inter-
17 national organizations only after consulting with the De-
18 partment of State. The Secretary may apply the technical
19 and managerial expertise of the Army Corps of Engineers
20 to domestic and international problems related to water
21 resources, infrastructure development and environmental
22 protection. There is authorized to be appropriated up to
23 \$3,000,000 each fiscal year for the purpose of carrying
24 out this section. The Secretary may also accept and ex-
25 pend additional funds from other Federal agencies or

1 international organizations for purposes of carrying out
2 this section.

3 **SEC. 21. EXPANSION OF SECTION 1135 PROGRAM.**

4 Section 1135 of the Water Resources Development
5 Act of 1986 (33 U.S.C. 2309a) is amended by—

6 (1) striking the period at the end of subsection
7 (a) and inserting the following: “and to determine if
8 the operation of such projects has contributed to the
9 degradation of the quality of the environment.”;

10 (2) striking the last two sentences of subsection
11 (b); and

12 (3) redesignating subsections (c), (d), and (e)
13 as (e), (f), and (g) and inserting the following new
14 subsections:

15 “(c) If the Secretary determines that operation of a
16 water resources project has contributed to the degradation
17 of the quality of the environment, the Secretary may also
18 undertake measures for restoration of environmental qual-
19 ity, provided such measures are feasible and consistent
20 with the authorized project purposes.

21 “(d) The non-Federal share of the cost of any modi-
22 fications or measures carried out or undertaken pursuant
23 to subsections (b) or (c) of this section shall be 25 percent.
24 No more than \$5,000,000 in Federal funds may be ex-

1 pended on any single modification or measure carried out
2 or undertaken pursuant to this section.”.

3 **SEC. 22. REGULATORY PROGRAM FUND.**

4 (a) There is hereby established in the Treasury of the
5 United States the “Army Civil Works Regulatory Program
6 Fund” (hereafter referred to as the “Regulatory Program
7 Fund”) into which shall be deposited fees collected by the
8 Secretary of the Army pursuant to paragraph (b) of this
9 section. Amounts deposited into the Regulatory Program
10 Fund are authorized to be appropriated to the Secretary
11 of the Army to cover a portion of the expenses incurred
12 by the Department of the Army in administering laws per-
13 taining to the regulation of the navigable waters of the
14 United States as well as wetlands.

15 (b) REGULATORY FEES.—(1) To the extent provided
16 for in appropriation Acts, the Secretary of the Army shall
17 establish and collect fees for the evaluation of commercial
18 permit applications; for the recovery of costs associated
19 with the preparation of Environmental Impact Statements
20 required by the National Environmental Policy Act of
21 1969; and for the recovery of costs associated with wet-
22 lands delineations for major developments affecting wet-
23 lands. Amounts collected pursuant to this paragraph shall
24 be deposited into the Regulatory Program Fund estab-
25 lished by paragraph (a) of this section.

1 (2) The fees described in paragraph (1) of this sub-
2 section shall be established by the Secretary of the Army
3 at rates that will allow for the recovery of receipts at
4 amounts as provided for in appropriation Acts.

○